IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4385 of 2007()

CRA NO.25/03 II ADDITIONAL SESSIONS JUDGE
C.C.NO.638/1999 J.F.C.M- II, KOLLAM

REVN. PETITIONER: APPELLANTS 1 TO 3/ ACCUSED NO. 1 TO 3

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1. SUBHASH, S/O.KURUPAN,
   RESIDING AT PARIYARAKADU, LEKSHAM VEEDU,
   COLONY HOUSE NO.595, MULAVANA CHERRY,
   MULAVANA VILLAGE, KOLLAM.

2. SUDHEER, S/O.KURUPPAN,
   RESIDING AT PARIYARAKADU, LEKSHAM VEEDU,
   COLONY HOUSE NO.595, MULAVANA CHERRY,
   MULAVANA VILLAGE, KOLLAM.

3. SUGATHAN, S/O.KURUPAN,
   RESIDING AT PARIYARAKADU, LEKSHAM VEEDU,
   COLONY HOUSE NO.595, MULAVANA CHERRY,
   MULAVANA VILLAGE, KOLLAM.

BY ADV. SRI.V.V.RAJA

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P.No. 4385 of 2007

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Dated this the 10th day of December, 2007

ORDER

Revision petitioners who were accused Nos.1 to 3 in C.C.No.638 of 1999 on the file of the Judicial Magistrate of First Class- I, Kollam for offences punishable under Sections 323, 324, and 294(b) read with 34 IPC., challenge the conviction entered and the sentence passed against them concurrently by the courts below for the offence punishable under Section 324 IPC.

2. The case can be summarised as follows.

3. On 3.06.99 at about 8 p.m. while PW1 was proceeding along the Panchayath road, which leads to Paruthumpara from Mulavana Irunila junction and when he reached in front of property near the house of one Sri.Gangadharan Pillai, the three accused persons approached him and called him obscene words and asked him whether he would betrayed them. The 1st accused then dealt two blows above the eye brows of PW1 with an iron rod and A2 made a cut injury on the head of PW1 with a sword and A3 beat him on the left eye brow with a stick. The accused have thereby committed the aforesaid offences.

4. On the side of the prosecution five witnesses were examined as PW1 to PW5; Six documents were marked as Exts.P1 to P6. No material object was produced or marked.

5. The accused denied the incriminating circumstances put to them when they were questioned under Section 313 Cr.P.C. No defence evidence was adduced.

6. The learned Magistrate after trial as per judgment dated 31.12.02 found the revision petitioner guilty of the offences punishable under section 323, 324 read with Sec.34 IPC and convicted them and sentenced each of them to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- each and on default to pay the fine, to undergo simple imprisonment for one month each. No separate punishment was imposed under Section 323 IPC. They were however acquitted of the offence under Section 294(b) IPC.

7. On appeal preferred by the revision petitioners before the Sessions Court, Kollam as Criminal Appeal No.25/2003, the II Additional Sessions Judge as per the judgment dated 14.8.07 dismissed the appeal confirming the conviction and sentence passed against the revision petitioners. Hence this revision.

8. I heard the learned counsel appearing for the revision petitioners and the learned Public Prosecutor.

9. Even though the learned counsel appearing for the revision petitioners assailed the conviction recorded against the revision petitioners on various grounds, in as much as the conviction has been recorded by the courts below after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loath to interfere with the said conviction entered against the revision petitioners. The conviction is accordingly confirmed.

10. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioners. Even though PW1 came out with a complaint that he was beaten with an iron road and cut with a sword during the occurrence which took place on 3.6.99, the first information was given and lodged only on 16.6.99. Ext.P2 medical certificate proved through PW5 does not give the injuries corresponding to the above version given by PW1. In fact, the said medical certificate shows that he was given first aid and let off. Under these circumstances, I do not think that the

revision petitioners deserve penal servitude by way of incarceration. I am of view that an appropriate fine and compensation shall meet the ends of justice. Accordingly, the sentence imposed on the revision petitioners under Section 324 IPC is set aside and instead, each of them is directed to undergo imprisonment till the rising of the Court and to pay a sum of Rs.3,000/-(Rupees three thousand only) as fine and on default to pay the fine, to undergo simple imprisonment for one month. Out of the fine amount a sum of Rs.3,000/- in equal shares shall be paid as compensation to PW1 under Section 357(1) Cr.P.C.

In the result the revision is disposed of confirming the conviction entered but modifying the sentence as above. The fine amount shall be deposited within one month from today.

V. RAMKUMAR, JUDGE

sj